



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

July 17, 2008

Mr. Rob Kelly
City of Oak Harbor Public Works Dept.
865 SE Barrington Dr.
Oak Harbor, WA 98277-4092

Dear Mr. Rob Kelly:

**Re: Further Action Determination under WAC 173-340-515(5) for the following
Hazardous Waste Site:**

- Name: Oak Harbor STP
- Address: 1501 SE City Beach St Plant
- Facility/Site No.: 63184452
- VCP No.: NW1823

Thank you for submitting your independent remedial action report for the Oak Harbor STP facility (Site) for review by the State of Washington Department of Ecology (Ecology) under the Voluntary Cleanup Program (VCP). Ecology appreciates your initiative in pursuing this administrative option for cleaning up hazardous waste sites under the Model Toxics Control Act (MTCA), Chapter 70.105D RCW.

This letter constitutes an advisory opinion regarding whether further remedial action is necessary at the Site to meet the substantive requirements of MTCA and its implementing regulations, Chapter 70.105D RCW and Chapter 173-340 WAC. Ecology is providing this advisory opinion under the specific authority of RCW 70.105D.030(1)(i) and WAC 173-340-515(5).

This opinion does not resolve a person's liability to the state under MTCA or protect a person from contribution claims by third parties for matters addressed by the opinion. The state does not have the authority to settle with any person potentially liable under MTCA except in accordance with RCW 70.105D.040(4). The opinion is advisory only and not binding on Ecology.

Ecology's Toxics Cleanup Program has reviewed the following information regarding the Site:

1. Letter from the City of Oak Harbor to John Bails dated April 18th 2003.
2. Underground Storage Tank Closure Confirmation Report, dated May 10th 2007,



prepared by Earthworks Environmental, Inc.

3. Response to Request for Additional Information Concerning UST Closure Report, dated March 29th 2008, prepared by Earthworks Environmental, Inc.

The reports listed above will be kept in the Central Files of the Northwest Regional Office of Ecology (NWRO) for review by appointment only. Appointments can be made by calling the NWRO resource contact at 425.649.7239.

The Site is defined by the extent of contamination caused by the following release(s):

- Diesel range petroleum hydrocarbons in Soil and Ground Water.

The Site is more particularly described in Enclosure A to this letter, which includes a detailed Site diagram. The description of the Site is based solely on the information contained in the documents listed above.

Based on a review of the independent remedial action report and supporting documentation listed above, **Ecology has determined that the independent remedial action(s) performed at the Site are not sufficient to meet the substantive requirements contained in MTCA and its implementing regulations, Chapter 70.105D RCW and Chapter 173-340 WAC, for characterizing and addressing any of the contamination at the Site.** Therefore, pursuant to WAC 173-340-515(5), Ecology is issuing this opinion that **further remedial action is necessary** at the Site under MTCA.

- 1) The vertical and lateral extent of the site has not been fully characterized. An excavation pit diagram labeled "UST Site Excavation" dated 07/20/2000 was supplied along with analytical data. Four soil samples were taken and their locations identified on the diagram. The sample locations were the corners of the excavation pit. One sample exceeded MTCA cleanup standards. NW#1 (NW Corner) contained 22,200 mg/kg diesel. SW#2 (SW Corner) was high at 1,310 mg/kg which is less than MTCA Method A.
- 2) **No documentation has been submitted concerning further excavations or soil samples beyond this diagram. The extent of the subsurface contamination was not fully characterized. Additional soil sampling will be required in order to fully characterize the extent of the site.**
- 3) Section 3 of the report titled "Response to Request for Additional Information Concerning UST Closure Report", describes how the four Resource Protection Wells 'Groundwater Monitoring Wells' (MW-) were constructed. MW-1 was constructed by placing a large PVC pipe in the center of the old UST pit during

back filling with soil. MW-2, MW-3 & MW-4 were "also installed using a backhoe and PVC pipes".

None of the four groundwater monitoring wells meets the minimum requirements for the **construction** of a "*Resource Protection Well*" as outlined in Chapter 173-162 WAC, and **must** be decommissioned by a licensed well operator. Any questions pertaining to the minimum requirements for the **construction** of a "*Resource Protection Well*" as outlined in Chapter 173-162 WAC, contact Brad Gilmore Ecology Well Drilling Coordinator at 425.649.7044.

- 4) RCW 18.104.030 Compliance enjoined. RCW 18.104.030(6) It is unlawful:
....."for any person to contract to engage in the construction of a well or to act as a well operator without first obtaining a license pursuant to this chapter."

WAC 173-162-040(3) "A resource protection well operator license is required for all operators engaged in constructing or decommissioning resource protection wells and geotechnical soil borings."

A resource protection well operator license is required for all operators engaged in constructing or decommissioning resource protection wells and geotechnical soil borings.

It is unlawful except as provided in RCW 18.104.180, for any person to contract to engage in the construction of a well or to act as a well operator without first obtaining a license pursuant to this chapter.

- 5) None of the data generated from these illegal wells may be used. Contamination remained on one side wall above MTCA cleanup standards and the excavation pit was located within the saturated zone. Therefore groundwater sampling and potentially monitoring **must** be performed.

Please note that this opinion is based solely on the information contained in the documents listed above. Therefore, if any of the information contained in those documents is materially false or misleading, then this opinion will automatically be rendered null and void.

The state, Ecology, and its officers and employees make no guarantees or assurances by providing this opinion, and no cause of action against the state, Ecology, its officers or employees may arise from any act or omission in providing this opinion.

Again, Ecology appreciates your initiative in conducting independent remedial action and requesting technical consultation under the VCP. As the cleanup of the Site progresses, you may request additional consultative services under the VCP, including assistance in identifying

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applicable regulatory requirements and opinions regarding whether remedial actions proposed for or performed at the Site meet those requirements.

If you have any questions regarding this opinion, please contact me at 425.649.4446.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dale Myers", with a long horizontal flourish extending to the right.

Dale R. Myers
NWRO Toxics Cleanup Program Site Manager

Dm/kp

Enclosures: 1

cc: Russ Olsen, Ecology

Figure 2. Water Treatment Plant UST site, soil sample locations, past stockpile location, and surrounding buildings.

